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VIETNAMESE GOVERNMENT'S DECREE NO. 08/2023/ND- CP DATED MARCH 5, 2023 AMENDING AND SUSPENDING SOME ARTICLES OF DECREES PRESCRIBING PRIVATE PLACEMENT AND TRADING OF PRIVATELY PLACED CORPORATE BONDS IN DOMESTIC MARKET AND OFFERING OF CORPORATE BONDS IN INTERNATIONAL MARKET



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Recently, a number of bond issuers, especially those engaged in real estate

business, have faced difficulties meeting their due bond principal and interest repayment obligations. With the purpose to facilitate issuers as well as providing more options for bondholders, on 5 March 2023, the Government issued Decree No. 08/2023/ND-CP amending, supplementing and suspending the effect of a number of articles in the Decrees prescribing private placement and trading of privately placed corporate bonds in domestic market and offering of corporate bonds in international market ("*Decree 08/2023*").

Decree 08/2023 is expected to bring positive solutions for bond issuers and bondholders in payment of due bonds. The Decree takes effect from the date of signing and marks following significant points:

1. Allowing negotiation to pay principal and interest of due bonds with other assets

Formerly, the bond issuer is responsible to "*make full and timely payments of bond principal and interests when they become due, and exercise associated rights (if any) for bondholders under terms and conditions of bonds*" as stipulated in Article 34.3 of Decree No. 153/2020/ND-CP of the Government prescribing private placement and trading of privately placed corporate bonds in domestic

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Vol 16 Issue June 2023

market and offering of corporate bonds in international market ("*Decree 153/2020*"), with no regulation allowing adjustment of the payment term. Decree 08/2023, notably, provides regulations allowing the issuers and bondholder to negotiate to pay due principal and interest of bond with other assets. In particular, regarding bonds offered for sale in the domestic market, where the issuers cannot make full and timely payment of the bond principal and interest in Vietnam dong in compliance with the issuance plan announced to the investors, the issuers may negotiate with the bondholders to pay due principal and interest of the bond with other assets on the following principles:

(i) comply with the provisions of civil law and relevant laws. For conditional business lines, they must also comply with the provisions of respective law on such conditional business lines;

(ii) must be approved by the bondholders;

(iii) issuers must disclose unusual information and take full responsibility for the legal status of assets used to pay bond principal and interest in accordance with the laws.

This new legal framework is expected to motivate bond issuers that are having difficulty paying bond principals and interests according to the issuance plan announced to investors and, together with

bondholders, to find a solution to settle the payment of due bond principal and interest. On the other side, the new regulation opens up more options for bondholders to receive payment with other assets instead of long waiting for the issuers to pay in compliance with the initial plan.

However, it should be noted that this new legal framework only stipulates that the issuers are fully responsible for the legal status of the assets used for payment, but does not provide a strict mechanism to control the legality of the assets and subsequent payment process. Many argue that the change of payment assets can pose issues to asset valuations, asset divisions, notably under circumstances where many bondholders receive payment with the same real estate.

2. Extending bond's term up to 02 years compared to the announced issuance plan

For bonds issued prior to and having outstanding balance by 16 September 2022 – the effective date of Decree No. 65/2022/ND-CP amending and supplementing a number of articles of Decree No. 153/2020 ("*Decree 65/2022*"), instead of not allowing issuers to change the term of issued bonds as prescribed in Article 3.3.(b) of Decree No. 65/2022, Decree 08/2023 allows the change of the terms and

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LAW FIRM

Vol 16 Issue June 2023

www.bizconsult.vn

conditions of bonds on the condition that it must ensure the following principles:

(i) approved by a competent authority of the issuers;

(ii) accepted by bondholders representing at least 65% of the total outstanding bonds of the same type;

(iii) where the bond's term is extended, the maximum duration shall not exceed 02 (two) years compared to the term in the bond issuance plan announced to investors;

(iv) for bondholders who do not agree to change the bond's terms and conditions, the issuers are responsible for negotiation to ensure the interests of the investors. Where a bondholder does not accept the negotiation plan, the issuers must fulfill all obligations towards the bondholder according to the bond issuance plan announced to investors (even if the change in terms and conditions of bonds has been approved by bondholders representing 65% or more of the total bonds).

Accordingly, the notable new point is the extension of the bond's term up to 2 years compared to the term in the bond issuance plan announced to investors. This period shall give the issuers more time to fulfill its obligations towards bondholders.

3. Suspending the effect of some regulations until the end of 2023

Decree 08/2023 further suspends the effect of the following provisions in Decree 65/2022 until the end of 31 December 2023:

(i) Regulations on determining the status of individual professional stock investors at Article 8.1.(d) of Decree 153/2020 as amended in Article 1.6 of Decree 65/2022;

(ii) Regulations on bond distribution time of each issuance instalment in Article 1.7 and 1.8 of Decree No. 65/2022;

(iii) Regulations on credit rating results for bond issuers at Article 12.2.(e) of Decree 153/2020 as amended in Article 1.9 of Decree No. 65/2022.

The suspension of the above regulations is considered a short-term measure to help issuers facing difficulties in liquidity and payment of due bonds due.

To sum up, Decree 08/2023 provides new mechanisms for bond issuers to negotiate with bondholders to solve the current challenging situation of the domestic corporate bond market. Generally, to be able to change the payment assets and extend the bond's term, the issuers must obtain the approval of the bondholders. Thus, bondholders are advised to carefully consider before making their decisions in the context where many issues may arise in regards to asset valuation, division of assets of co-ownership or the issuers' provision of unclear or inaccurate information.

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Vol 16 Issue June 2023

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Vol 16 Issue June 2023

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Vol 16 Issue June 2023

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